

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3457 of 1996

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT sd/-Illegible

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2: Yes. 3 to 5: No.

JAMNABAI PREMJI ZALA

Versus

DIRECTOR OF PENSION AND PF

Appearance:

MR AM MEHTA for Petitioner

MR DA BAMBHANIA for Respondent No. 2

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 12/09/97

ORAL JUDGEMENT

Petitioner before this court claims family pension from the respondents herein. The petitioner is the widow of one Shri Premji Zala, who was serving as a Peon in the former Princely State of Navanagar. Late Shri Premji Zala served in the Judicial Department of the State of Navanagar from 21st May, 1931 to 31st December, 1947. It is not known in what circumstances said Shri Premji Zala ceased to serve under the State of Navanagar since 1st January, 1948. It is, however, undisputed that

after ceasing to be an employee of the State of Navanagar, said Shri Premji Zala did not receive any pension either from the State of Navanagar or the successor State. Said Shri Premji Zala died on 7th July, 1987. The petitioner being his widow, on 4th April, 1990 applied for family pension to the respondent No.3 herein. The respondent No.3 accepted the said application and made an order on 7th July, 1990 declaring that the petitioner was entitled to family pension and issued direction to pay family pension to the petitioner with effect from 1st April, 1989. While making the above referred order, the respondent No.3 relied upon the Government Resolutions dated 19th May, 1989 and 15th July, 1989. In view of the said order, the District Treasury Officer, respondent No.2 herein, on 3rd November, 1990 issued an order sanctioning provisional family pension to the petitioner. It is the claim of the petitioner that she was being paid family pension regularly since then. However, somewhere in the month of August, 1994, the petitioner ceased to receive family pension. Feeling aggrieved, she made an application to the respondent No.2. The respondent No.2 under his communication dated 26th February, 1996 informed the petitioner that the petitioner's pension was discontinued in view of the direction dated 12th August, 1994, and shall be paid to her after her claim for pension was sanctioned. Thereafter, under communication dated 15th April, 1996, the respondent No.3 instructed the petitioner that recovery of the amount of family pension paid to the petitioner was ordered by the District Treasury Officer and that she shall deposit the amount of family pension received by her with the Government. Feeling aggrieved, the petitioner has preferred this petition.

2. Learned advocate Mr. Mehta appearing for the petitioner has produced on record an additional paper-book containing the Government Resolutions dated 19th May, 1989; 15th July, 1989; 11th May, 1990 and 24th March, 1992. He has relied upon these Resolutions and has submitted that the petitioner has a right to receive family pension from the respondents herein. He has further submitted that the respondent No.3 having sanctioned the family pension to the petitioner, the same could not have been discontinued by the District Treasury Officer. The claim made by the petitioner has been contested by the respondents. Learned AGP Mr. Bambhaniya has appeared for the respondents and has submitted that the petitioner was never entitled to family pension which is introduced under the Government Resolution dated 1st January, 1972. The said Resolution has not been produced

on the records of the matter inspite of the specific direction of the court and inspite of the time being granted for production of the said Resolution.

3. It is undisputed that late Shri Premji Zala had served under the former State of Navanagar i.e. in the territory which is now part of the State of Gujarat. However, on merger of the Princely States, late Shri Premji Zala's service was not continued. Further, the nature of termination of his service or the reasons thereof, is not known to either of the parties. It is not disputed that on merger of the Princely States, late Shri Premji Zala was not allocated to the successor State i.e. State of Saurashtra. After re-organisation of the States, neither Shri Premji Zala has served under the State of Bombay, nor under the State of Gujarat. The question that, therefore, arises is whether the petitioner should be entitled to the family pension for the service rendered by her late husband to the former State of Navanagar. The petitioner has not been able to establish that under the prevailing service conditions, said Shri Premji Zala was entitled to pension from the State of Navanagar or that the service rendered by said Shri Premji Zala was a pensionable service. However, it is undisputed that Shri Premji Zala never received any pension during his life time for the service rendered by him in the State of Navanagar. The petitioner has not been able to establish that on merger of the Princely States also, the successor State was liable to pay pension to late Shri Premji Zala. I do not find any provision of law or any ruling under which the petitioner would be entitled to family pension for the service rendered by her husband to the former State of Navanagar. Section-81 of the Bombay Re-organisation Act makes provision regarding service of the Government servants serving in connection with the affairs of the State of Bombay before the appointed day. Proviso to sub-section (6) reads thus -

" Provided that the conditions of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to the State of Maharashtra or Gujarat under this section shall not be varied to his disadvantage except with the previous approval of the Central Government ".

It is evident that the conditions of service applicable before the appointed day in case of any person, provisionally or finally allotted to the State of Gujarat under the said section could not be varied to his disadvantage except with the previous approval of the Central Government. Under proviso to sub-section (7) of section 115 of the State Re-organisation Act, 1956, a similar protection was granted to the person, who immediately before the appointed day, was serving in connection with the affairs of the Union or in any of the existing States of Saurashtra. Thus, it is obvious that if any person serving in the State of Saurashtra were allocated to the successor State of Bombay, the conditions of his service as were applicable in the State of Saurashtra could not have been varied to his disadvantage. In the present case, late Shri Premji Zala did not serve the former State of Saurashtra. It appears that his service was terminated while he was serving in the State of Navanagar. In my view, therefore, neither the late Shri Premji Zala nor anybody claiming through him, can have any claim over the State of Gujarat for the services rendered to the former State of Navanagar. The Family Pension Scheme introduced on 1st January, 1972 would govern the widows of only those Government servants who could have any claim over the State of Gujarat. Since I am of the view that late Shri Premji Zala had no claim over the State of Gujarat, which is evident from the fact that he never received pension during his life time from the State of Gujarat, the petitioner can not have any claim for family pension against the State of Gujarat.

4. Under the Government Resolution dated 19th May, 1989, the Family Pension Scheme which was hitherto restricted to the families of the Government servants who retired or died after 1st June, 1971, has been extended also to the families of the Government servants who retired or died before 1st June, 1971. This, however, should necessarily mean that for claiming family pension by the family of a Government servant, first, such Government servant must have a right to claim pension against the State of Gujarat. It, therefore, can not be held that the family of late Shri Premji Zala who died on 7th July, 1987, can claim family pension under the aforesaid Resolution dated 19th May, 1989. Under the Government Resolution dated 15th July, 1989, the Government has prescribed procedure for routing applications for family pension in the cases where the Department from which the Government servant retired or died, has been abolished or merged with another

Department. The said Resolution makes the procedural provision and no substantive right to claim family pension is conferred under the said Resolution. Similarly, under the Government Resolution dated 11th May, 1990, procedural instructions are issued and the said Resolution does not confer a substantive right to family pension on the widow of the deceased Government employee. Instructions regarding grant of family pension to the widow of the deceased Government employee who has retired or died before 1st May, 1960, are contained in the Government Resolution dated 24th March, 1992. Said Resolution also refers to the Government servants who have rendered service under any Government within the territories of State of Gujarat and who is governed by the Revised Pension Rules, 1950. Evidently, late Shri Premji Zala was not governed by the Revised Pension Rules, 1950 and the provisions contained in the said Resolution can not be applied to the widow of late Shri Premji Zala i.e. the present petitioner. I am, therefore, of the opinion that the petitioner is not entitled to receive family pension from the State of Gujarat for the service rendered by her late husband under the former State of Navanagar.

5. The next question that arises is whether the family pension which was sanctioned by the respondent No.3 in favour of the petitioner could be withdrawn by the subsequent order. It appears that under the above referred Pension Scheme, the Director of Pension and Provident Fund, the respondent No.1 herein, is the competent authority to process the application for family pension made under the above referred Scheme. Thus, the respondent No.1 being the competent authority was responsible to scrutinise the application made by the petitioner and to make order in accordance with law. In view of the recommendation made by the respondent No.3, a provisional pension was sanctioned to the petitioner. However, such provisional sanction granted pending scrutiny of her application can not create right to receive family pension. It is evident that after scrutiny of the petitioner's application, the respondent No.1 has rejected the same and the same is communicated by respondent No.3 through communication dated 15th April, 1997. I am, therefore, of the view that no right to receive family pension is conferred upon the petitioner on account of the recommendation made by the respondent No.3 or the provisional family pension granted to her by the respondent No.2. I, however, do not find any justification in the respondents' action in seeking recovery of the amount of family pension paid to the

petitioner under the provisional Pension order made by the respondent No.2.

6. Petition is, therefore, partly allowed. The respondents' action in seeking recovery of the amount of family pension paid to the petitioner under the order dated 3rd November, 1990 is quashed and set aside. The respondents are permanently restrained from recovering any amount from the petitioner from the amount of family pension paid to her. The petitioner's claim for family pension is rejected. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

JOSHI